Gene Technology (Queensland) Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Gene Technology (Queensland) Bill 2016.

Policy objectives and the reasons for them

The objectives of the Bill are to:

1. meet the Queensland Government commitment to a nationally consistent scheme for gene technology regulation under the intergovernmental Gene Technology Agreement 2001 (GTA)
2. provide certainty and consistency for Queensland state government agencies, higher education institutions and sole traders in regard to the gene technology regulatory scheme and clarity around regulatory compliance.

Gene technology activities in Australia are regulated through an integrated national legislative scheme. The scheme aims to protect the health and safety of people and the environment by identifying and managing risks associated with gene technology.

State, Territory and Commonwealth legislation are all required to achieve a nationally consistent scheme to provide full regulatory coverage for gene technology. The majority of organisations conducting dealings with genetically modified organisms (GMOs) are covered by Commonwealth legislation because they are constituted under Australian Government corporations law or they are Federal bodies. Queensland legislation increases the coverage of the national scheme to include Queensland state government agencies, higher education institutions and sole traders.

Queensland's gene technology legislation consists of the *Gene Technology Act 2001* (the Queensland Act) and the *Gene Technology Regulation 2002*, which mirror the Commonwealth gene technology legislation and have been declared corresponding legislation. Queensland also has a 'wind-back' notice in place which serves to remove ambiguity about whether the Commonwealth or Queensland legislation applies to particular institutions in the State such as Queensland state government agencies and higher education institutions. Queensland legislation enables complete regulatory oversight by the Gene Technology Regulator (the Commonwealth regulator), an independent Commonwealth statutory office holder responsible for administering and enforcing the regulatory system for the development and use of gene technology.

Currently, Queensland's gene technology legislation must be amended whenever the Commonwealth gene technology legislation is amended to ensure that all gene technology activities in Queensland are regulated consistently and that state government agencies, higher

education institutions and sole traders are covered. It may take at least six months to have legislative amendments placed before the Queensland Parliament following changes to the Commonwealth legislation. When the Queensland legislation is out of alignment with the Commonwealth legislation, a period of uncertainty and inconsistency exists for Queensland state government agencies, higher education institutions and sole traders who will need to adhere to existing, potentially outdated legislation compared to researchers working for private companies or Federal bodies who will be covered under amended, updated Commonwealth legislation.

In 2013, an independent statutory review of the Queensland Act was undertaken to investigate whether it was operating as an efficient and effective component of the regulatory scheme. The Queensland Review concluded that there are potential efficiencies to be gained from automatically applying the Commonwealth gene technology laws as laws of Queensland (i.e. a lock-step approach). This is the most efficient way of maintaining consistency between the Commonwealth and Queensland legislation. It was recommended that this should only proceed if there are also legislated provisions which provide safeguards for Queensland.

The government response prepared in 2014 agreed with the key conclusion of the Queensland Review and in 2015, the Government authorised the preparation of the Gene Technology (Queensland) Bill 2016. The Bill adopts a lock-step opt out approach for future amendment of Queensland gene technology legislation whereby the Commonwealth gene technology laws are automatically applied as laws of Queensland, with provision to 'opt out' of particular Commonwealth amendments by regulation in instances where it is not in Queensland's interests to adopt them. This new approach provides efficiency, certainty and consistency for Queensland state government agencies, higher education institutions and sole traders and provides clarity around regulatory compliance. A lock-step opt out approach will result in administrative efficiencies as it removes the need to prepare new Queensland legislation every time there is a change to the Commonwealth legislation. The inclusion of an 'opt out' provision provides safeguards for Queensland in instances where particular amendments are not in Queensland's interests.

Achievement of policy objectives

The Bill seeks to prevent Queensland gene technology legislation becoming out of date in the future, thus providing certainty and consistency for Queensland state government agencies, higher education institutions and sole traders, ensuring that they are not disadvantaged relative to private companies and Federal bodies that operate under the Commonwealth legislation.

To achieve its objectives, the Bill:

- replaces the existing Queensland gene technology legislation (i.e. *Gene Technology Act 2001* and *Gene Technology Regulation 2002*) with new legislation
- applies the Commonwealth gene technology laws as laws of Queensland
- provides for the modification of the automatically-adopted Commonwealth gene technology laws through regulation (in effect, an 'opt out' model) in instances where it is not in Queensland's interests to adopt Commonwealth amendments

- applies the Commonwealth *Acts Interpretation Act 1901*, criminal laws and administrative laws to the Act
- applies officer functions and powers under the Commonwealth gene technology laws in Queensland.

In relation to the 'opt out' provision (3rd dot point), it is expected to be used rarely and only as a last resort, given the rigorous process in place for achieving agreement to legislative changes by the Commonwealth, States and Territories under the intergovernmental GTA.

Alternative ways of achieving policy objectives

This Bill provides the most appropriate way to achieve the policy objectives and strikes a reasonable balance between the degree of control to be retained by the Queensland Parliament and the administrative efficiencies resulting from lock-step. The advantage of adopting a lock-step opt out approach is that nothing need be done when amendments are made to the Commonwealth legislation unless Queensland objects to an amendment. It removes the need to prepare new Queensland legislation and have it considered by the Queensland Parliament every time there is a change to the Commonwealth legislation.

Whilst the Queensland Review identified a number of options to achieve efficiencies through lock-step (in addition to maintaining the status quo), there are no alternatives considered appropriate for achieving the policy objectives. A lock-step approach with no 'opt out' provision would not provide a legislated mechanism to prevent amendments to Commonwealth legislation from taking effect as amendments to Queensland legislation and thus does not provide a degree of control by the Queensland Parliament. A lock-step opt in approach has significant drawbacks including the inefficiencies due to a step needing to be taken each time amendments to the Commonwealth legislation were made and the significant difficulty in identifying the law which has been applied as a law of Queensland.

Estimated cost for government implementation

There are costs involved in amending Queensland's gene technology legislation every time there is a change to the Commonwealth gene technology legislation. Given the Queensland Government's policy of maintaining corresponding legislation under the intergovernmental GTA, this approach is expected to significantly reduce future costs because it removes the need to prepare new Queensland legislation.

Consistency with fundamental legislative principles

Potential breaches of fundamental legislative principles are addressed below.

Legislation should have sufficient regard to the institution of Parliament – *Legislative Standards Act 1992*, subsection 4(2)(b)

Clause 6 (Application of Commonwealth gene technology laws)
The Bill is national scheme legislation. It applies the Commonwealth *Gene Technology Act 2000* and *Gene Technology (Licence Charges) Act 2000* as Queensland laws. The law this Bill proposes to repeal, the *Gene Technology Act 2001*, was 'mirror' legislation (i.e. it reproduced all the substantive provisions of the Commonwealth *Gene Technology Act 2000*).

The effect of implementing Queensland gene technology legislation through 'applied' legislation will essentially be the same as through 'mirror' legislation. Moving from a mirror scheme to an applied scheme does not remove the opportunity to make amendments to Queensland's gene technology legislation in the future.

The former Scrutiny of Legislation Committee and, more recently, portfolio committees, have expressed concerns about national scheme legislation. The broad concern is that the Queensland Parliament's sovereign power to make laws for Queensland should not be compromised by administrative agreements among Australian governments that bind the parties to specific laws.

The intergovernmental GTA sets out the understanding between Commonwealth, State and Territory Governments regarding the establishment of a nationally consistent regulatory system for gene technology. It reflects agreement between the Commonwealth, States and Territories that there is a need for a cooperative legislative scheme that is nationally consistent, based on a scientific assessment of risks and ensures the regulatory burden is consistent with the risks.

Changes are made to the Commonwealth gene technology legislation only after detailed consultation with the States and Territories. In accordance with Clause 40 of the intergovernmental GTA, any proposed change to the Commonwealth legislation must be approved by the Council of Australian Governments' Legislative and Governance Forum on Gene Technology (LGFGT) by special majority (i.e. by at least two-thirds of the Parties to the intergovernmental GTA). Changes are also placed before the Gene Technology Standing Committee (GTSC) prior to LGFGT consideration, thus there is considerable opportunity for a jurisdiction to raise issues and seek to resolve any matters of concern.

The limited parliamentary scrutiny of proposed amendments under 'applied' legislation is ameliorated to some extent by the Bill including a provision that requires the Minister to table a copy of any amendments of the Commonwealth legislation in the Legislative Assembly within 10 sitting days of commencement (clause 21). This will ensure the Queensland Parliament is aware of changes to the applied Commonwealth gene technology laws. The Legislative Assembly will also be able to consider amendments of the Commonwealth law that the Executive considers should not be adopted in Queensland. There will be provision in the Bill to 'opt out' of particular amendments of the Commonwealth law by regulation (clause 7).

Clause 7 (Modification of Commonwealth gene technology laws)

Clause 7 of the Bill provides for the modification of the Commonwealth gene technology laws by the making of a regulation. A regulation can be made to specify that a new amendment to the Commonwealth gene technology laws will not take effect in Queensland (i.e. an 'opt out' provision). This may be considered to be a "Henry VIII clause" whereby it would allow the Act to be amended by regulation.

It is expected that an 'opt out' provision would be used rarely and only as a last resort, given the rigorous process in place for achieving agreement to legislative changes under the intergovernmental GTA which would precede any exercising of an 'opt out' provision. It should also be noted that each instance of 'opting out' of a Commonwealth amendment by Queensland would risk the corresponding State law status of the Queensland legislation.

It is recognised that the use of "Henry VIII clauses", in certain circumstances, may be justified. Section 49 of the *Statutory Instruments Act 1992* requires subordinate legislation to be tabled in the Legislative Assembly, and it may be disallowed under section 50 of that Act. Therefore, any 'opt out' regulation is subject to disallowance by the Legislative Assembly.

Clause 8 (Interpretation of Commonwealth gene technology laws)
Clause 8 of the Bill excludes the application of the Queensland *Acts Interpretation Act 1954* and *Statutory Instruments Act 1992* in relation to the interpretation of the applied provisions. To operate effectively as national scheme legislation, interpretation provisions need to be consistent with the Commonwealth and as such the Bill applies the Commonwealth *Acts Interpretation Act 1901* in relation to the interpretation of the applied provisions.

Clause 12 (Application of Commonwealth criminal laws to offences against applied provisions)
Clause 12 of the Bill adopts Commonwealth criminal laws and applies them as Queensland laws in relation to an offence against the applied provisions. Examples of relevant Commonwealth laws include the *Crimes Act 1914*, the *Criminal Code Act 1995*, the *Director of Public Prosecutions Act 1983* and the *Judiciary Act 1903*. Future amendments to the Commonwealth criminal laws will be automatically applied in Queensland for the purposes of the Bill. This potential breach arises as a practical necessity of taking part in national scheme legislation to achieve uniformity.

Clause 15 (Application of Commonwealth administrative laws to applied provisions)
Clause 15 of the Bill adopts Commonwealth administrative laws and applies them as Queensland laws in relation to the applied provisions. Future amendments to the Commonwealth administrative laws will be automatically applied in Queensland for the purposes of the Bill. This potential breach arises as a practical necessity of taking part in national scheme legislation to achieve uniformity.

Clause 16 (Exclusion of legislation of this jurisdiction)
Clause 16 of the Bill excludes the application of certain Queensland laws to the applied provisions in respect of the Commonwealth regulator. It is not appropriate for jurisdiction specific legislation regarding financial matters, auditing, information management and the employment of public servants to apply to the Commonwealth regulator. This breach is considered justified in the interests of ensuring uniform application and operation of the Commonwealth regulator's activities consistently in all jurisdictions.

Clause 22 (Regulation-making power)
Clause 22 of the Bill allows the Governor in Council to make regulations. In particular, this will allow a regulation to be made to 'opt out' of particular amendments of the Commonwealth law in instances where it is not in Queensland's interests.

Legislation should have sufficient regard to rights and liberties of individuals – *Legislative Standards Act 1992*, subsection 4(2)(a)

Clause 12 (Application of Commonwealth criminal laws to offences against applied provisions)
Clause 12 of the Bill may impact on individual rights. For example, a person may have particular rights if an offence against the applied provisions was dealt with under Queensland

criminal laws, rather than under Commonwealth criminal laws. This potential breach arises as a practical necessity of taking part in national scheme legislation to achieve uniformity.

Clause 15 (Application of Commonwealth administrative laws to applied provisions)
Clause 15 of the Bill may impact on individual rights. For example, a person may have particular rights under Queensland administrative laws, rather than under Commonwealth administrative laws. This potential breach arises as a practical necessity of taking part in national scheme legislation to achieve uniformity. It should be noted that by applying the Commonwealth administrative laws as laws of Queensland, a person affected by a decision under the applied provisions may apply to the Administrative Appeals Tribunal in the same way they would if the decision had been made under the Commonwealth legislation.

Consultation

Consultation was undertaken in 2013 as part of the second independent review of the Queensland *Gene Technology Act 2001*. Public consultation was facilitated through the Queensland Government's Get involved consultation website. The consultation period opened on 5 August 2013 and closed on 30 August 2013. Stakeholders were advised of the Queensland Review through newspaper notices (Brisbane, Cairns, Townsville, Rockhampton, Toowoomba) and direct email, with social media (Facebook, Twitter) also utilised.

Five written submissions were received and a range of consultations were conducted, as determined from these submissions and from information drawn from the second review of the Commonwealth *Gene Technology Act 2000* and other general insights. Consultations were also held with officers of relevant Institutional Biosafety Committees and other relevant parties including Queensland universities and research organisations.

Consultation undertaken during the Queensland Review indicated regulatory uncertainty and inconsistency for Queensland based research organisations when the Queensland legislation is out of alignment with the Commonwealth legislation. Review participants strongly advocated that Queensland move to lock-step with the Commonwealth legislation in order to mitigate this issue, as well as to achieve further administrative and efficiency gains.

The Queensland Review concluded that there are potential efficiencies to be gained from automatically applying the Commonwealth gene technology laws as laws of Queensland (i.e. a lock-step approach). This is the most efficient way of maintaining consistency between the Commonwealth and Queensland legislation. It was recommended that this should only proceed if there are also legislated provisions which provide safeguards for Queensland.

The Government response to the recommendations of the Queensland Review was prepared in 2014. Both the Queensland Review and Government response were publicly released in September 2014, with stakeholders advised by direct email. The Government response agreed with the key conclusion of the Queensland Review that a lock-step approach should be pursued, in conjunction with legislated provisions to provide safeguards for Queensland.

In 2015, the Government authorised the preparation of the Gene Technology (Queensland) Bill 2016 to implement a lock-step opt out approach for future amendment of Queensland gene technology legislation whereby the Commonwealth gene technology laws are automatically applied as laws of Queensland, with provision to ‘opt out’ of particular

Commonwealth amendments by regulation in instances where it is not in Queensland's interests to adopt them.

A draft Bill was released on 15 April 2016 for a four week public consultation period. Public consultation was facilitated through the Queensland Government's Get involved consultation website. Stakeholders including universities and research organisations were advised of public consultation through newspaper notices (Brisbane, Cairns, Townsville, Rockhampton and Toowoomba) and direct email. Relevant Queensland Government websites and social media posts (Facebook, Twitter) were also utilised. Industry association Life Sciences Queensland also promoted public consultation on the draft Bill to its members.

Three written submissions were received – one fully supportive, one supportive of 'lock-step' but not 'opt out', and one not supportive of a 'lock-step opt out' approach.

Consistency with legislation of other jurisdictions

The gene technology regulatory scheme for Australia consists of three components: gene technology legislation; the intergovernmental GTA; and the Council of Australian Governments' LGFGT.

The intergovernmental GTA sets out the understanding between Commonwealth, State and Territory Governments regarding the establishment of a nationally consistent regulatory system for gene technology.

As a result of constitutional limitations (for example, relating to activities of state government agencies, higher education institutions and sole traders), the Commonwealth legislation cannot provide full national coverage for gene technology. State, Territory and Commonwealth legislation are all required to achieve a nationally consistent scheme that provides full regulatory coverage for gene technology.

Under Clause 39 of the intergovernmental GTA, States and Territories undertake to keep their gene technology legislation corresponding with the Commonwealth legislation. The most efficient way of maintaining consistent legislation between the Commonwealth and corresponding State and Territory legislation is by adoption by reference i.e. lock-step.

All States and Territories except Western Australia have corresponding gene technology legislation. Of these, New South Wales has adopted a 'lock-step' approach with no 'opt out provision, while the Northern Territory and Tasmania have adopted a 'lock-step, opt out' approach similar to that set out in the current Bill. Western Australia has a Bill proposing a 'lock-step, opt out' approach under consideration by its Legislative Council.

The Bill is national scheme legislation. It applies the Commonwealth *Gene Technology Act 2000* and *Gene Technology (Licence Charges) Act 2000* as Queensland laws.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that, when the Bill is enacted, the Act may be cited as the Gene Technology (Queensland) Act 2016.

Clause 2 provides that the Act will commence on a day to be fixed by proclamation. All parts of the Act are to commence at the same time.

Clause 3 states that the purpose of the Act is to protect the health and safety of people, and to protect the environment, by identifying risks posed by, or as a result of, gene technology; and manage those risks through regulating certain dealings with genetically modified organisms. This is the same as the object of the Commonwealth Gene Technology Act.

This clause establishes that the purpose of the Act is to be achieved by applying the Commonwealth gene technology laws, as modified under this Act, as laws of Queensland; and by providing for the Commonwealth gene technology laws and the applied provisions to be administered on a uniform basis by the Commonwealth as if they were a single law.

Clause 4 specifies that the Act binds all persons, including the State, and the Commonwealth and the other States so far as the legislative power of the Parliament permits. However, neither the State, the Commonwealth nor another State can be prosecuted for an offence against the Act.

Clause 5 defines the following key terms used in the Act:

- applied provisions
- Commonwealth administrative laws
- Commonwealth Gene Technology Act
- Commonwealth gene technology laws
- Commonwealth Licence Charges Act
- Commonwealth regulator

Any terms used in this Act and also in the Commonwealth Gene Technology Act have the same meaning under this Act as they do in the Commonwealth Gene Technology Act unless the contrary intention appears.

Part 2 Applied provisions

Clause 6 applies the Commonwealth gene technology laws as laws of Queensland. The Commonwealth gene technology laws will apply as if they extend to matters in relation to which Queensland may make laws, whether or not the Commonwealth may make laws in relation to those matters.

Clause 7 provides for the modification of the Commonwealth gene technology laws by the making of a regulation. For example, a regulation can be made to specify that a new amendment to the Commonwealth gene technology laws will not take effect in Queensland.

Clause 8 provides, for the purposes of uniformity and effective operation as national scheme legislation, that the Commonwealth *Acts Interpretation Act 1901* will apply as a law of Queensland in relation to the interpretation of the applied provisions. The *Acts Interpretation Act 1954* and *Statutory Instruments Act 1992* of Queensland will not apply in relation to the interpretation of the applied provisions.

Part 3 Functions and powers under applied provisions

Clause 9 provides that the Commonwealth regulator and other authorities and officers will have the same functions and powers under the applied provisions (as modified under Clause 7) as they do under the Commonwealth gene technology laws.

It should be noted that the Commonwealth regulator has complete regulatory oversight of all organisations involved with gene technology in Queensland.

Clause 10 provides that any delegation made by the Commonwealth regulator under the Commonwealth Gene Technology Act will extend to the applied provisions.

Part 4 Offences

Clause 11 provides that the object of the Part is to provide for an offence against the applied provisions to be treated as an offence against a law of the Commonwealth (this would include treating an offence as indictable, if that is how the offence is treated under a law of the Commonwealth). Examples of the purposes for which an offence will be treated in this manner are included.

Clause 12 provides that the relevant Commonwealth criminal laws will apply as laws of Queensland in relation to an offence against the applied provisions. Examples of relevant Commonwealth laws include the *Crimes Act 1914*, the *Criminal Code Act 1995*, the *Director of Public Prosecutions Act 1983* and the *Judiciary Act 1903*. Under this clause:

- the Commonwealth Director of Public Prosecutions is to have power to prosecute offences against the applied provisions
- it is intended for sections 4G and 4H of the *Crimes Act 1914* to apply in relation to the determination of offences as summary or indictable
- it is intended for section 15B of the *Crimes Act 1914* to apply in relation to the time in which a prosecution may be commenced
- it is intended for Part 1B of the *Crimes Act 1914* to apply in relation to sentencing
- it is intended for Part 1C of the *Crimes Act 1914* to apply in relation to the investigation of offences
- it is intended for section 68 of the *Judiciary Act 1903* to apply in relation to procedural matters.

This clause makes further clarification that an offence against the applied provisions is taken not to be an offence against the laws of Queensland. It is intended for section 59 of the Queensland *Jury Act 1995* to apply in relation to the requirement for a unanimous verdict for offences against a law of the Commonwealth.

Clause 13 provides that Commonwealth officers and authorities upon whom functions and powers relating to offences are conferred as per Clause 12 will be able to exercise those functions and powers in Queensland. This clause also provides that officers will act in the

same manner when exercising their functions or powers in Queensland as they would in Commonwealth Territories.

Clause 14 provides that an offender punished for an offence under the Commonwealth gene technology laws will not be prosecuted or punished again for the offence under the applied provisions.

Part 5 Administrative laws

Clause 15 provides for the Commonwealth administrative laws to apply as laws of Queensland in relation to the applied provisions. By applying the Commonwealth administrative laws as laws of Queensland, a person affected by a decision under the applied provisions may apply to the Administrative Appeals Tribunal in the same way they would if the decision had been made under the Commonwealth legislation.

Commonwealth provisions which confer jurisdiction on the Federal Court will not be applied as a law of Queensland.

Clause 16 provides that certain Queensland legislation does not apply to the applied provisions in respect of the Commonwealth regulator. Queensland Acts dealing with financial matters, auditing, information management and the employment of public servants will not apply to the Commonwealth regulator. This ensures that the Commonwealth regulator's activities can operate in a consistent way in all jurisdictions.

Queensland Acts dealing with financial matters, auditing, information management and the employment of public servants will apply in relation to the applied provisions if an entity of the State is exercising functions under the applied provisions. A State entity will be exercising functions under the applied provisions if the applied provisions impose a function or duty on the State entity, or a function or duty is delegated to that entity.

Clause 17 provides that Commonwealth officers and authorities upon whom functions and powers relating to administrative laws are conferred as per Clause 15 will be able to exercise those functions and powers in Queensland. This clause also provides that officers will act in the same manner when exercising their functions or powers in Queensland as they would in Commonwealth Territories.

Part 6 Miscellaneous

Clause 18 provides that anything issued (such as licences and certificates), given or done under the applied provisions will not be affected by also being issued, given or done under the Commonwealth gene technology laws.

Clause 19 provides that the Commonwealth laws referred to in the provisions of Commonwealth criminal and administrative laws (applying by virtue of clauses 12 and 15) will apply to the Act.

Clause 20 provides that the Commonwealth be paid all fees, penalties, fines and any other money that are authorised or directed to be payable by or imposed on a person.

Clause 21 provides that the Minister must table in the Legislative Assembly a copy of any amendments to the Commonwealth Gene Technology Act or the Commonwealth Licence Charges Act (or a regulation under either Act) within 10 sitting days after the amendment comes into operation. This will ensure that the Queensland Parliament is informed of changes to the applied Commonwealth gene technology laws.

Clause 22 provides for the making of regulations under this Act by the Governor in Council.

Part 7 Repeal

Clause 23 provides for the *Gene Technology Act 2001* to be repealed by this Act.

Part 8 Transitional provisions for repeal of Gene Technology Act 2001

A number of transitional provisions have been included to ensure a smooth transition from the repealed Act to this Act. Generally when a decision or action is pending (at the point of commencement of this Act), that decision or action is made under the repealed legislation. Ongoing effects (after the time of commencement of this Act) are dealt with under the applied provisions.

Division 1 Preliminary

Clause 24 defines the following key terms for Part 8:

- existing GMO licence
- repealed Act

Division 2 Provision for offences

Clause 25 provides for offences committed before commencement of this Act to be treated under the repealed Act.

Division 3 Provisions for licensing system

Clause 26 ensures the ongoing effect of GMO licences (that is, an existing GMO licence will continue under the applied provisions and retain the same start date). There is the potential for new conditions to be imposed by the Commonwealth regulator on an existing GMO licence.

Clause 27 provides for how undecided GMO licence applications are to be dealt with on commencement of this Act. GMO licence applications that have been made under the repealed Act (Part 5, Division 2 of the repealed Act) but not decided before commencement of this Act will be treated under the repealed Act. A GMO licence given under the repealed Act will be taken to be a GMO licence given under the applied provisions.

Clause 28 provides that section 67 of the repealed Act will continue to apply to a person who gave information to the Commonwealth regulator (under section 65, 66 or 72D(2)(h) of the repealed Act) before commencement of this Act.

Clause 29 provides that a notice about cancellation, suspension, transfer or variation of an existing GMO licence given by the Commonwealth regulator before commencement of this Act will continue in effect as if it had been given under the applied provisions.

Clause 30 provides for how undecided applications to transfer an existing GMO licence are to be dealt with on commencement of this Act. Applications to transfer an existing GMO licence that have been made under the repealed Act (section 70 of the repealed Act) but not decided before commencement of this Act will be treated under the repealed Act. A notice approving an application to transfer an existing GMO licence given under the repealed Act will be taken to be a notice given under the applied provisions.

Clause 31 provides for how undecided applications to vary an existing GMO licence are to be dealt with on commencement of this Act. Applications to vary an existing GMO licence that have been made under the repealed Act (section 71 of the repealed Act, other than section 71(2B)) but not decided before commencement of this Act will be treated under the repealed Act. A notice approving an application to vary an existing GMO licence given under the repealed Act will be taken to be a notice given under the applied provisions. By excluding section 71(2B) of the repealed Act, this Act will allow for the Commonwealth regulator to consider a broader range of information when assessing variation applications from licence holders (in line with the changes to the Commonwealth legislation which commenced in March 2016). The Commonwealth regulator will be able to take into account risk assessment and risk management plans prepared for licence applications (for which licences have been issued) other than the licence to be varied. This allows licence variations to proceed provided potential risks associated with the dealings are adequately assessed in an existing risk assessment and risk management plan and would avoid some circumstances where applicants would need to seek a new licence.

Clause 32 provides that restrictions will continue to apply on varying particular GMO licences given under the repealed Act (under section 71(2) and (2A) of the repealed Act).

Division 4 Provisions for GMO register

Clause 33 provides that a determination made under the repealed Act (section 78(1) or 80(1) of the repealed Act) before commencement of this Act will continue to have effect as if it had been made under the applied provisions.

Clause 34 provides for how undecided applications to include dealings with GMOs on the GMO Register are to be dealt with on commencement of this Act. Applications for a determination that have been made under the repealed Act (section 78(2)(a) of the repealed Act) but not decided before commencement of this Act will be treated under the repealed Act. A determination made under the repealed Act will be taken to be a determination made under the applied provisions.

Division 5 Provisions for certification

Clause 35 ensures the ongoing effect of certifications given under the repealed Act (section 84 of the repealed Act). There is the potential for new conditions to be imposed by the Commonwealth regulator on an existing certification.

Clause 36 provides for how undecided certification applications are to be dealt with on commencement of this Act. Certification applications that have been made under the repealed Act (section 83 of the repealed Act) but not decided before commencement of this Act will be treated under the repealed Act. A certification given under the repealed Act will be taken to be a certification given under the applied provisions.

Clause 37 provides that a notice about cancellation, suspension, transfer or variation of an existing certification given by the Commonwealth regulator before commencement of this Act will continue in effect as if it had been given under the applied provisions.

Clause 38 provides for how undecided applications to transfer an existing certification are to be dealt with on commencement of this Act. Applications to transfer existing certifications made under the repealed Act (section 89A(1) of the repealed Act) but not decided before commencement of this Act will be treated under the repealed Act. A notice approving an application to transfer an existing certification given under the repealed Act will be taken to be a notice given under this Act.

Division 6 Provisions for accreditation

Clause 39 ensures the ongoing effect of accreditations given under the repealed Act (section 92 of the repealed Act). There is the potential for new conditions to be imposed by the Commonwealth regulator on an existing accreditation.

Clause 40 provides for how undecided accreditation applications are to be dealt with on commencement of this Act. Accreditation applications that have been made under the repealed Act (section 91 of the repealed Act) but not decided before commencement of this Act will be treated under the repealed Act. An accreditation given under the repealed Act will be taken to be an accreditation given under the applied provisions.

Clause 41 provides that a notice about cancellation, suspension or variation of an existing accreditation given by the Commonwealth regulator before commencement of this Act will continue in effect as if it had been given under the applied provisions.

Division 7 Provisions about enforcement

Clause 42 ensures the ongoing effect of directions given under the repealed Act (section 146 of the repealed Act).

Clause 43 provides that section 147 of the repealed Act will continue to apply where an application to the Supreme Court for an injunction was made before commencement of this Act.

Division 8 Provisions for powers of inspection

Clause 44 ensures the ongoing effect of inspectors appointed under the repealed Act (section 150 of the repealed Act).

Clause 45 provides that Part 11, Division 9 of the repealed Act will continue to apply to a seized thing.

Clause 46 ensures the ongoing effect of warrants issued under the repealed Act (Part 11, Division 10 of the repealed Act). A warrant issued before commencement of this Act will continue in effect as if it had been issued under the applied provisions.

Division 9 Provisions for review of decisions

Clause 47 provides that a decision made under the repealed Act (Schedule 1, Column 1 of the repealed Act) will be taken to be a reviewable decision under the applied provisions. A person under the repealed Act (Schedule 1, Column 2 of the repealed Act) will be taken to be an eligible person for the decision under the applied provisions. This clause would apply in the event that a cancellation is made under the repealed Act, and a holder applies for a review of the decision after commencement of this Act. The decision is reviewed under the applied provisions.

Clause 48 provides for how undecided review applications are to be dealt with on commencement of this Act. Review applications that have been made under the repealed Act (section 181 or 183) but not decided before commencement of this Act will be treated under the repealed Act. A decision made under the repealed Act will be taken to be a decision made under the applied provisions.

Division 10 Provisions relating to confidential commercial information

Clause 49 ensures the ongoing effect of declarations made under the repealed Act (section 185 of the repealed Act).

Clause 50 provides for how undecided declaration for confidential commercial information applications are to be dealt with on commencement of this Act. Declaration applications that have been made under the repealed Act (section 184 of the repealed Act) but not decided before commencement of this Act will be treated under the repealed Act. A declaration made under the repealed Act will be taken to be a declaration made under the applied provisions.

Clause 51 ensures the ongoing effect of revocations made under the repealed Act (section 186 of the repealed Act).

Part 9 Consequential amendments

Division 1 Amendment of this Act

Clause 52 states that Division 1 amends this Act.

Clause 53 amends the long title of this Act to: An Act to apply the *Gene Technology Act 2000* (Cwlth) and *Gene Technology (Licence Charges) Act 2000* (Cwlth) as laws of Queensland.

Division 2 Amendment of other Acts

Clause 54 provides for amendments to other legislation.

Schedule Other amendments

The Schedule provides for consequential amendments to:

- Agricultural and Veterinary Chemicals (Queensland) Act 1994 – update of definition
- Biodiscovery Act 2004 – update to refer to this Act
- Biosecurity Act 2014 – update to refer to this Act
- Right to Information Act 2009 – update to refer to this Act.